

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Mark N. Fellenz
PLAINTIFF

V.

Enkata Technologies
DEFENDANT

CIVAL ACTION

NO. 04•10563 PBS

AMMENDMENT

BACKGROUND

1. The following is amended to the above civil action.
2. A fact buried in the original complaint and prior amendments but worth highlighting is that Enkata Technologies ("Defendant") failed to properly notify Mark Fellenz ("CHEWIE") of Defendant's *cancellation* of its plan with HealthNet. This represents one half of the retroactive carrier change at issue in the original complaint. However, it is specifically brought to the attention of the Court as the retroactive cancellation and the retroactive enrollment (with another carrier) may not have necessarily occurred at the same point in time, which may possibly make Defendant's failure to notify CHEWIE two separate violations, one regarding notification of retroactive cancellation and another regarding notification of retroactive enrollment with another carrier, both of which are clear (statutory) obligations of Defendant.
3. It is admitted that the above may be 'technical' and that it is possible that both events, i.e. the retroactive cancellation and retroactive enrollment, occurred at the same point in time. However,

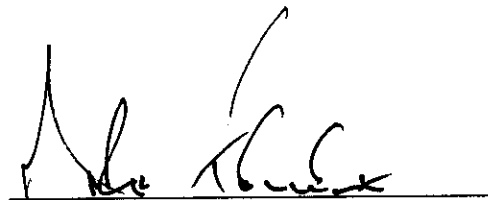
Defendant *refuses* to provide an historical account of what actually happened, though there is no doubt that Defendant *did not* notify CHEWIE for whatever reason and has even admitted such to the Employee Benefits Security Administration of the Department of Labor. Defendant's refusal to give CHEWIE access to even basic, historical fact, let alone for Defendant to fulfill its fiduciary responsibility, leaves CHEWIE with no recourse but to avail himself of the Court in order to seek justice, especially as all efforts to amicably resolve the matter directly with Defendant now appear to fall on deaf ears.

RELIEF

CHEWIE requests the Court's consideration of Defendant's clear violation in not having notified CHEWIE in the event Defendant's failure to notify CHEWIE of the retroactive cancellation is separate and distinct from Defendant's failure to notify CHEWIE of the retroactive enrollment with another carrier.

Furthermore, Defendant's behavior in not providing even basic, historical information can only be characterized as another instance of Defendant's clear intent to evade and obstruct Defendant's fiduciary responsibility, and CHEWIE requests that the Court take Defendant's behavior into account when considering proper remedy.

Signature



Name

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